

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 29 1994

In re)	FCC 94-148
)	
Amendment of Part 74 of the)	MM Docket No. 93-24
Commission's Rules With Regard)	
to the Instructional Television)	
Fixed Service)	

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**COMMENTS OF CENTRAL TEXAS WIRELESS TV, INC.**

Central Texas Wireless TV, Inc. ("CT Wireless") by its attorney and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") Rules, submits the following comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding released by the Commission on July 6, 1994.

I. STATEMENT OF INTEREST

1. CT Wireless operates a wireless cable system in rural portions of central Texas. CT Wireless is a wholly-owned subsidiary of Central Texas Telephone Cooperative, Inc. ("CTTC"). CTTC is a telephone cooperative owned by its telephone subscribers. CT Wireless and CTTC operate in rural parts of Central Texas where broadcast television signals are scarce and traditional cable programming is nonexistent. CT Wireless was formed for the purpose of providing educational and entertainment video programming to individuals living in and around Goldthwaite, Brady and San Saba, Texas. CT Wireless currently leases excess airtime from several school districts in and around Brady, Goldthwaite and San Saba, Texas and has plans to

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expand to outlying areas once the Commission lifts its freeze on applications for new ITFS channels. Accordingly, CT Wireless will be directly affected by the rules adopted in this proceeding.

2. CT Wireless commends the Commission for taking measures that will enhance the efficiency of processing Instructional Television Fixed Service ("ITFS") applications, thereby facilitating the prompt delivery of educational and entertainment video programming to the public. CT Wireless, however, will limit its comments to those proposals affecting rural licensees and the rural wireless cable operators to whom they lease excess airtime capacity.

II. DISCUSSION

3. The ITFS application process has been laden with speculative applicants whose apparent abuse of the Commission's process only becomes evident after the application is granted and the ITFS permittee fails to meet its 18-month construction deadline. The filing of these speculative applications has resulted in permittees who have been unwilling or unable to construct their ITFS facilities once their applications are granted. CT Wireless notes that, on any given day, the FCC's "Broadcast Application" public notices lists numerous applications from ITFS permittees requesting extensions of time to construct their facilities. Some of these permittees were issued authorizations more than four years ago and have yet to construct their facilities! Yet, the Commission continually grants the extension requests.

4. In an attempt to provide service to areas where schools and potential customers have demanded educational and video programming, CT Wireless discovered that several schools

have held authorizations for three years and have not even begun to construct their facilities. Further investigation revealed that several of these unbuilt facilities will remain unbuilt for some time pending the sale and assignment of lease rights to various commercial wireless cable operators. These schools and their wireless cable lessees have come to rely on the expectation of obtaining extensions to construct from the Commission.

5. CT Wireless commends the Commission for proposing to adopt a window filing system. The window filing system will deter speculators from filing "on top of" legitimate applicants and will enhance the speed and efficiency with which limited Commission staff can process applications. CT wireless respectfully submits that in addition to several of the proposals set forth in the FNPRM that are designed to curb the filing of speculative applications, the Commission should also tighten its standards for granting extensions of time to construct ITFS facilities. By imposing stricter build out rules, the Commission will serve the public interest by ensuring that service is deployed in a timely fashion or alternatively that the licenses are made available to those who are serious about providing the service. The remainder of CT Wireless's comments discuss further remedies the Commission could take to ensure that service is promptly provided by those who are committed to the provision of wireless cable service.

A. Financial Qualifications

6. CT Wireless believes that potential applicants for ITFS facilities will be deterred from filing speculative applications if educational entities seeking to lease excess airtime to wireless cable operators are required to submit, as part of their application, proof of financial ability to construct and operate their proposed system. This financial qualification requirement

could take the form of the financial qualification requirements used by the Cellular Branch of the Common Carrier Bureau's Mobile Service's Division to determine whether cellular unserved area applicants are financially qualified to construct and operate their cellular systems for one year.^{1/} Under CT Wireless's proposal, those educational entities relying on a commercial wireless cable operator for funding would submit the financial qualification information for the wireless cable operator rather than themselves. CT Wireless proposes that those educational entities who do not propose to rely on the wireless cable operator to construct the facilities would not have to submit proof of financial viability. Rather, these ITFS applicants would merely certify to their financial ability to construct and operate the ITFS system. CT Wireless's proposal will not require the allocation of substantial staff resources. The Commission's existing cellular financial qualifications rules require the submission of audited financial statements, thereby making it relatively easy for the staff to determine whether an entity is financially qualified. Also, such financial submissions are rarely challenged because they are certified by accountants using generally accepted principles of accounting. Given the large number of construction extension requests that have been filed by ITFS applicants in the past few years, evidence of a firm financial commitment should be required as part of the application process.

B. Application Caps

7. The Commission has requested comment on two proposals that deal with capping the number of applications that are filed during any given filing window. The first proposal

^{1/} See 47 C.F.R. § 22.917(f). A copy of this rule is attached hereto as Exhibit A.

would cap the number of applications an individual nonlocal ITFS entity can file.^{2/} The second proposal would limit the total number of applications in which a wireless cable entity can participate.

1. Nonlocal ITFS Entities

8. CT Wireless submits that nonlocal ITFS entities should be limited to filing only three applications during any given window. Nonlocal ITFS applicants tend to be less familiar with the local programming needs of the community even though they are required to form a local programming committee. Nonlocal applicants do not have the community ties that local applicants have and tend to be affiliated with frequency speculators. This proposal will deter nonlocal ITFS entities backed by frequency speculators from submitting large numbers of applications simply to bargain with local groups desirous of building or expanding their systems.

2. Wireless Cable Entities

9. CT Wireless believes that a commercial wireless cable operator and its affiliates should not be permitted to be associated with more than fifteen ITFS applications during any given window period. If wireless cable operators are permitted to exceed this cap, the Commission's processing staff will be inundated with applications causing processing delays. More importantly, by limiting the number of applications to fifteen, the Commission can better assure that licensees will complete construction in a timely manner. If a wireless cable operator

^{2/} A nonlocal entity is an educational entity that is not physically located within the community of the area sought to be served. See 47 C.F.R. 74.932, Note 1.

is only allowed to be associated with fifteen applications during any one filing window, it will be less likely to overextend itself and can reasonably be expected to construct and place the ITFS systems into operation without the need for additional extensions.

C. Expedited Consideration of Applications To Serve Rural Areas

10. CT Wireless supports the proposal to give expedited consideration to ITFS applicants. However, CT Wireless submits that expedited consideration should apply only to ITFS applications filed by applicants associated with commercial wireless cable operators who (1) seek to serve Rural Service Areas ("RSAs") as defined by the Commission^{3/}; (2) have already constructed and placed into service at least 12 ITFS and/or Multichannel Multipoint Distribution Service ("MMDS") channels in a rural area; and (3) agree to an accelerated construction schedule. CT Wireless believes that the accelerated construction schedule should be nine months -- half the time imposed by the Commission's current rules.^{4/} CT Wireless believes that nine months is more appropriate than the six months proposed by the Commission because of delays associated with shipping equipment to outlying rural areas. Additionally, a nine month construction schedule will take into consideration weather delays or other construction problems that may arise.

^{3/} The Commission has defined Rural Service Areas for cellular licensing purposes as areas not included in Metropolitan Statistical Areas. See 47 C.F.R. § 22.2. RSAs are divided along county boundaries and are easily distinguished from MSAs.

^{4/} See Rule § 73.3598(b).

11. Adoption of this proposal is of particular importance to rural wireless cable operators and the educational entities and subscribers they seek to serve since the areas sought to be served have little or no video programming available to them. Unlike wireless cable operators seeking to provide service to metropolitan areas, rural wireless cable operators have an added incentive to construct expeditiously -- a market of potential rural subscribers who have heretofore been forced to go without any type of broadcast or cable service. It would disserve the public interest to delay video services to those living in rural parts of America because of processing delays, especially when those within the community are seeking to provide the service. Accordingly, CT Wireless submits that the Commission give expedited consideration to ITFS applications filed by applicants associated with a wireless cable operator who has already placed a minimum of 12 wireless cable channels into operation in an RSA, agrees to an expedited construction schedule of nine months and proposes to provide service within a RSA.

D. Assignment of Construction Permits

12. CT Wireless supports the Commission's proposal to limit the allowable consideration for unbuilt ITFS facilities to out-of-pocket expenses, as it does with respect to the sale of broadcast construction permits and other unbuilt stations. Adoption of this proposal will again deter speculation by unscrupulous applicants.

E. Application of the Four Channel Rule

13. CT Wireless submits that the Commission should retain as much flexibility as possible in determining the area of operation for purposes of the four-channel limitation rule set

forth in Rule Section 74.902(d). CT Wireless proposes that the Commission adopt a general rule that defines an "area of operation" as one that is within twenty miles of the transmitter. However, if it can be demonstrated that two sites located less than twenty miles apart can operate without co-channel interference (i.e., due to terrain blockage or other technical reasons), an ITFS licensee should be permitted to operate up to four channels in each area without violating the four channel limitation rule. Adoption of this proposal is of vital importance to rural areas that must rely on a limited number of schools that qualify as ITFS licensees in large geographic areas. Accordingly, CT Wireless respectfully requests that the Commission adopt this flexible approach.

F. Offset

14. CT Wireless supports the Commission's proposal to require frequency offset to resolve interference between co-channel applicants and existing licensees and between mutually-exclusive applicants. Eliminating the need to negotiate the use of frequency offset with existing licensees, permittees and applicants will expedite the provision of service to the public, including those living in rural areas.

G. Protected Service Areas

15. CT Wireless supports the Commission's proposal to limit interference protection to those who have requested it on a prospective basis. Under the proposed rule, pending applications to modify facilities and applications for new facilities would not be affected by a subsequently filed request for interference protection. CT Wireless agrees that the proposed rule

will eliminate interference protection requests made solely to obstruct the processing of pending applications.

H. Receive-Site Interference Protection

16. CT Wireless agrees with the Commission's proposal to limit receive site interference protection to those receive sites located within 35 miles of the transmitter. CT Wireless also suggests that the Commission adopt a rule to permit the addition of receive sites only by those ITFS licensees who have already placed their facilities into operation. CT Wireless believes that the Commission's processes are being abused by unprincipled parties seeking to expand their service areas on paper making it difficult for legitimate operators to provide expanded service. Accordingly, CT Wireless requests the Commission to grant applications to add additional receive sites only to those ITFS entities who are actually providing service.

I. Reasonable Assurance of Receive Sites

17. CT Wireless supports the Commission's proposal to require reasonable assurance from educational entities that they will participate in the educational service programs offered by the ITFS applicant. Several of the ITFS licensees from whom CT Wireless leases excess airtime have been falsely identified as receive sites by certain applicants for new and modified ITFS facilities. Indeed, in many instances the schools identified as receive sites had actually refused offers from such applicants to provide them with programming prior to the filing of the application containing the identification. CT Wireless urges the Commission to adopt rules that would require all ITFS licensees to obtain a consent letter from the receive site agreeing to use

the ITFS programming in their school's curriculum. It is suggested that this consent letter be similar in form to the one attached hereto as Exhibit B. Requiring such a consent letter should help curtail the current abuse of the Commission's processes.

III. CONCLUSION

For the reasons set forth above, CT Wireless respectfully requests the Commission to adopt the proposed ITFS application processing rule changes. These rule changes will improve and enhance the efficiency of the ITFS application process, thereby facilitating the prompt delivery of educational and video programming services to the public.

Respectfully submitted,

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§22.917

(f) *Unserved areas.* Except as provided in paragraph (f)(8) of this section, all applicants for initial unserved area (both wireline or nonwireline carriers) systems are required to have a separate market specific firm financial commitment for each unserved area application filed. In addition, all applicants are required to comply with the following requirements:

(1) An applicant shall demonstrate, at the time of filing an application for an initial unserved area system that it has either a firm financial commitment or available financial resources necessary to construct and operate for one year its proposed cellular system. The firm financial commitment may be contingent on the applicant obtaining an authorization.

(2) The demonstration of commitment must include and be sufficient to cover the realistic and prudent estimated costs of construction, operating and other initial expenses for one year.

(3) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier and shall contain a statement that the lender—

(i) Has examined the financial condition of the applicant including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(ii) That the lender has examined the financial viability of each proposal for which the applicant intends to use the commitment;

(iii) That the lender is committed to providing a sum certain to the particular applicant;

(iv) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and

(v) That the commitment is not in any way guaranteed by any entity other than the applicant.

(4) Applicants intending to rely on personal or internal resources must submit—

(i) Audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(ii) A balance sheet current within 60 days of the date of filing that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and

(iii) A certification by the applicant or an officer of the applicant organiza-

tion attesting to the validity of the unaudited balance sheet.

(5) Applicants intending to rely upon financing obtained through the parent corporation must submit the information required by paragraphs (f)(4)(i) through (iii) of this section as the information pertains to the parent corporation.

(6) Each application for an assignment of a license (or permit), or for the transfer of control of a corporation holding a license (or permit), shall demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities by submitting adequate financial information under the guidelines specified in this section, as appropriate.

(7) *Notice upon default.* In addition to the disclosures required by paragraph (f)(8) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed radio station facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

(8) Licensees proposing to serve an unserved area adjacent and integrated to its system need not comply with the requirements of this paragraph (f).

EXHIBIT B

(Suggested Receive Site Assurance Letter)

[Address]

We have reviewed ____ School's program offerings which are currently proposed to be broadcast over its ITFS channels if the FCC awards ____ a license to operate the station. We are a state accredited educational institution and are firmly committed to incorporating the programs into our school curriculum. Further, we understand that we will be able to work with you to tailor the program schedule and selection of educational programs to suit our students' needs and interests. We intend to receive and use _ hours of formal educational programming per week for our enrolled students.

Should you have any questions, please contact the school.

Sincerely,